85-274

Supreme Court, U.S.
FILED
AUG 19 1985

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

CHARLES WARREN AND MARLENE D. STELLY,

PETITIONERS-APPELLANTS,

v.

COMMISSIONER OF INTERNAL REVENUE

RESPONDENT-APPELLEE.

A PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CHARLES WARREN STELLY,
INDIVIDUAL PERSON MERE MAN
MARLENE D. STELLY,
INDIVIDUAL PERSON MERE WOMAN
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56 pp

QUESTIONS PRESENTED FOR REVIEW

1. With regard to the primary Claim or Issue by Petitioners (i.e., that his wages or salary is NOT taxable as INCOME under the 16th Amendment), does 26 U.S.C. §61 (a), notwithstanding the appeal court's misinterpretation of it, or this court's Decision of Stellys v. C.I.R. (case no. 84-4782) in the U.S. Ct. of Appeals for the Fifth Cir., have PRECEDENCE over the U.S. Sup. Ct. decisions cited herein and in Petitioners' earlier briefs?

2. Was the U.S. Ct. of Appeal's consideration of the Issues presented by Petitioners (e.g., the 5th Cir. Ct.'s misquote of Petitioners' primary Claim on wages) and the courts resulting Decision of Stellys v. C.I.R. (case no. 84-4782) fair and just?

3. Was the U.S. Tax Court's consideration of the Motions and its resulting Order and Decision of Stellys v. C.I.R. (docket No. 26335-83) fair and just?

PARTIES

The parties, to the appeal to the U.S. Court of Appeals for the Fifth Circuit were Charles Warren and Marlene D. Stelly, appellants/pro se in case No. 84-4782, whereas appellees were Glen L. Archer, Jr., Carleton D. Powell, and William A. Whitledge.

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IN THE

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OCTOBER TERM, 1985

NO.

CHARLES WARREN and MARLENE D. STELLY,

Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

A PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

The petitioners respectfully pray that a writ of certiorari is issued to review the Judgment and Decision of the United States Court of Appeals for the Fifth Circuit, No. 84-4782, entered June 3, 1985 regarding petitioners Appeal from a Summary Judgment Decision (Docket No. 26335-83) of the U.S. Tax Court that was entered on September 5, 1984.

REPORTS

The decision of the United States Court of Appeals for the Fifth Circuit is reported as case No. 84-4782 entered June 3, 1985. The Order and Decision of docket No. 26335-83 of the U.S. Tax Court is reported as entered on September 13, 1984.

STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the Fifth Circuit (No. 84-4782) entered on June 3, 1985 is sought to be reviewed. Petitioners seek review of this decision of the Court of Appeals pursuant to 28 U.S.C. §1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

The constitutional provisions involved in this case are as follows:

U.S. Const., Art. 1 Sec. 9 cl. 4

No. Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

U.S. Const., Amendment 1

Congress shall make no law respecting... the right of the people peaceably... to petition the Government for a redress of grievances.

CONCISE STATEMENT OF THE CASE

Petitioners, Charles Warren and Marlene D. Stelly, in support of their Petition for Writ of Certiorari hereby state that this is the first step in the final stage to recover money paid under protest for what the IRS alleges to be a tax, but which we contend to be forbidden by the Constitution and Supreme Court decisions. The summary of events is as follows:

1. The IRS sent a notice of proposed changes to Petitioners regarding their 1980 tax return for four alleged omissions of interest income that was dated September 27, 1982.

2. Petitioners replied by letter dated October 12, 1982 (see appendix D-1)

explaining that only two interest payments were actually omitted, but that an amended return of the year 1980 would soon be forwarded.

3. The IRS disallowed Petitioners' 1980 amended return dated November 1, 1982 and mailed out a Notice of Deficiency on August 3, 1983 without any regard for the October 12, 1982 explanation letter.

4. Next, Petitioners duly filed their Petition for Redetermination of the Deficiencies dated September 11, 1983 and at that time began to prepare for their case. Realizing that their petition could be improved considerably, Petitioners requested written consent to amend their petition as explained in their letter dated March 23, 1984 (see appendix E-1), but never received a reply.

5. Respondent's Motion For Summary Judgment was filed July 24, 1984, and a Notice of Hearing for same in Washington,

D.C. was issued on July 26, 1984 which was the day before Petitioners even received their copy of Respondent's Motion For Summary Judgment.

6. Tax Court Judge Randolph F. Caldwell, Jr. granted the commissioner's (Respondent's) Motion for Summary Judgment on September 13, 1984 (see appendix B-1) although Petitioners had filed the following documents to no avail:

a. "Motion To Change Venue of [Hearing For] Summary Judgement" dated August 3, 1984,

b. "Response To Motion For Summary Judgment" dated August 1, 1984,

c. "Motion For Leave To Amend Petition" dated August 13, 1984,

d. "Amended Petition" dated July 28, 1984, and

e. "Statement at Hearing For Summary Judgment" dated September 3, 1984.

7. The Order and Decision of Judge Randolph F. Caldwell, Jr. was appealed to the United States Court of Appeals for the Fifth Circuit (No. 84-4782), but on June 3, 1985, Appeal Court Judges (Clark, Garwood, and Higginbotham) DISMISSED the appeal and REMANDED for a hearing to determine attorney's fees.

REASONS FOR GRANT OF WRIT

I. The Fifth Circuit Court of Appeal in Stellys v. C.I.R. (case No. 84-4782) Misinterpreted the Clause "INCOME(s) From Whatever Source Derived" Within Both 26 U.S.C. §61(a) and the 16th Amendment to the Constitution.

For several years after the 16th Amendment was supposedly ratified in 1913, the U.S. Supreme Court repeatedly defined what is taxable INCOME under this Amendment. Probably the case, through the following quotations, which best explains that "INCOME FROM whatever source derived" does

NOT include "ON THE SOURCE ITSELF", is Eisner v. Macomber:

a) Eisner v. Macomber, 252 U.S. 207, 208,40 Sup. Ct. 189, 64 L.Ed. 521, held

> ..."*Derived-from-capital*"; the *gain-derived-from--capital*," etc. Here we have the essential matter: not a gain *accruing* to capital; not a *growth* or *increment* of value *in* the investment; but a gain, a profit, something of exchangeable value, *proceeding from* the property, *severed from* the capital, however invested or employed, and *coming in*, being "*derived*"-that is, *received* or *drawn by* the recipient (the taxpayer) for his *separate* use, benefit and disposal-*that* is income derived from property. Nothing else answers the description.
>
> The same fundamental conception is clearly set forth in the Sixteenth Amendment- "incomes, *from* whatever *source derived*"- the essential thought being expressed with a conciseness and lucidity entirely in harmony with the form and style of the Constitution.

b) Furthermore, Eisner v. Macomber, supra, 205, states how the 16th Amendment MUST be construed:

> The Sixteenth Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted. In Pollock v. Farmers' Loan & Trust Co., 158 U. S. 601, 15 Sup. Ct. 912, 39 L. Ed. 1108, under the Act of August 27, 1894 (28 Stat. 509, 553, c. 349, § 27), it was held that taxes upon rents and profits of real estate and upon returns from investments of personal property were in effect direct taxes upon the property from which such income arose, imposed by reason of ownership; and that Congress could not impose such taxes without apportioning them among the states according to population, as required by article 1, §2, cl. 3, section 9, cl. 4, of the original Constitution.

c) Additionally, Eisner v. Macomber, supra, 206, states that the 16th Amendment does NOT repeal or modify the apportionment requirements of the Constitution for direct taxes upon property, real and personal:

> A proper regard for its genesis, as well as its very clear language, requires also that this amendment shall not be extended by loose construc-

> tion, so as to repeal or modify, except as applied to income, those provisions of the Constitution that require an apportionment according to population for direct taxes upon property, real and personal. This limitation still has an appropriate and important function, and is not be overridden by Congress or disregarded by the courts.

d) And Eisner v. Macomber, supra, 206, also states that any definition of INCOME within the 16th Amendment BY CONGRESS is NOT conclusive:

> In order, therefore, that the clauses cited from article 1 of the Constitution may have proper force and effect, save only as modified by the amendment, and that the latter also may have proper effect, it becomes essential to distinguish between what is and what is not "income," as the term is there used, and to apply the distinction, as cases arise, according to truth and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation after the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised.

II. Specifically, Petitioners' main Claim or Issue (i.e., an individual's wages or salary is NOT taxable as INCOME under the 16th Amendment) and the related Issue of what is included in DIRECT TAXES with reference to Art. 1 sec. 9 cl. 4 of the Constitution HAVE ALREADY BEEN DECIDED by U.S. Supreme Court rulings.

The following quotations from some of the many available cases are cited:

a) Regarding DIRECT TAXES, the court stated in Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601, that

> Taxes on real estate being indisputably direct taxes, taxes on the rents or income of real estate are equally direct taxes.
>
> Taxes on personal property, or on the income of personal property, are likewise direct taxes.

b) And the court explained further that an individual's labor is his own or personal property in Butchers Union

Co. v. Cresent City Co., 111 U.S. 746,757, when it stated that

> The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. (concurring opinion)

c) Paramount to this case in Evans v. Gore, 253 U.S., 263, on verifying that SALARY OF FEDERAL JUDGES NOT RENDERED TAXABLE BY INCOME TAX AMENDMENT, the court held that

> "...What was there Brushaber Case said was reaffirmed and applied in Stanton v. Baltic Mining Co., 240 U.S. 103, 112, 113, 36 Sup. Ct. 278, 60 L. Ed. 546, and Peck & Co. v. Lowe, 247 U.S. 165, 172, 38 Sup. Ct. 432, 62 L. Ed. 1049, and in Eisner v. Macomber, 252 U.S. 189, 40 Sup. Ct. 189, 64 L. Ed. 521, decided at the present term, we again held, citing the prior cases, that the Amendment "did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income."
>
> After further consideration, we adhere to that view and accordingly hold that the Six-

teenth Amendment does not authorize or support the tax in question.

d) Furthermore, in Evans v. Gore, supra, 260, the court reviews why the income tax amendment prior to the 16th Amendment was ruled unconstitutional by quoting from Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 15 Sup. Ct. 673; Id., 158 U.S. 601, 15 Sup. Ct. 912.

e) And, in Evans v. Gore, supra, 261, the court clearly reported that the LEGISLATIVE INTENT[1] of the 16th Amendment did not extend the taxing powers to INCOME not taxable before such as the wages or salary of individuals.

f) Finally in Evans v. Gore, supra, 262, the court quoting from Brushaber v. Union Pacific R.R. Co., 240 U.S. 1, 17, 18, 36 Sup. Ct. 236,

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[1]Cong. Rec., vol. 45, pp. 1694-1699, 2245-2247, 2539-2540.

241, concluded that the essential clause of the 16th Amendment, "tax burden which resulted on the property FROM WHICH THE INCOME WAS DERIVED", had to be distinguished from the SOURCE ITSELF as demanded by the earlier Pollock case.

III. Facts or Evidence That Should Have Affected the Appeal Court's Decision in Stellys v. C.I.R. (case no. 84-4782) and additional Reasons For Grant of Writ.

The following facts or evidence were either disregarded or misstated by the appeal court in its decision of Stellys v. C.I.R. (case no. 84-4782) for the 5th Circuit.

a) The C.I.R. made an error in its determination of the deficiency of omitted interest income for Petitioners' 1980 tax return.

This means that the actual interest shortage that was not reported was $2,094.66 and not $2,314.00 as claimed by the C.I.R. (See appendixes C, D, E, and F). How could the Appeal Court Judges (Clark, Garwood, and Higginbotham) ignore this important fact mentioned throughout and before the case?

b) The appeal court's decision of Stellys v. C.I.R. (case no. 84-4782) for the 5th Circuit misquotes Petitioners major contention stating it was "that taxing their wages and salary income is unconstitutional".

Petitioners have NEVER made such a statement. Laws passed by Congress may be ruled unconstitutional, but here the question is whether or not an individual's wages or salary is taxable as INCOME under the 16th Amendment. (See appendices A and F).

c) Contrary to what is implied in the above mentioned appeal court decision (case no. 84-4782), Petitioners were NEVER warned that their major contention or claim was frivolous, nor were they EVER given any explanation as to how or why it supposedly is frivolous.

Petitioners letter of March 23, 1984 calling specific attention to their contention according to their final amended tax return for 1980 was NEVER answered. Later, at the September 5, 1984 Hearing for Summary Judgment held unfairly and approximately 2000 miles from Petitioners home, Judge Caldwell merely said, "and [he considers] his wages are not income-Well, there's nothing to either one of those two grounds-... and so, my feeling is that the Motion to Amend should be

denied, because there would be no point in raising a frivolous position such as that." Note, too, that Petitioners' Motion for Change in Venue of this very Hearing was "considered" and denied at the actual Hearing for Summary Judgment. Finally, note that Petitioners strongly requested that ORAL ARGUMENT be heard for the appeal court case mentioned above (case no. 84-4782); however, this was denied. PETITIONERS HAVE NOT YET HAD A DAY IN COURT. (See appendices A, B, C, E and F).

d) Contrary to the above mentioned appeal court decision (case no. 84-4782), Petitioners contentions as presented herein are NOT frivolous (nor unreasonable) and their right to contest the C.I.R.'s interpretation of individual income tax law

is protected by their first Amendment right; therefore, sanctions such as double costs plus reasonable attorney's fees against the Stellys is unlawful.

The part of the 1st Amendment relevant to this case which states that

> "Congress shall make no law respecting...the right of the people peaceably...to PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES."

is actually like a two edged sword. Petitioners not only have a constitutional right to contest the C.I.R. as in their major contention, but they must also be informed as to how or why their contention is lawfully improper if it is an incorrect legal position. Unquestionably, the I.R.S. and the tax and appeal courts have failed in this regard.

Additionally, we bring to the Court's attention the following U.S. Supreme Court rulings:

1) Miranda v. Arizona, 384 U.S. 436, 491, 86 Sup. Ct. 1602 held: "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

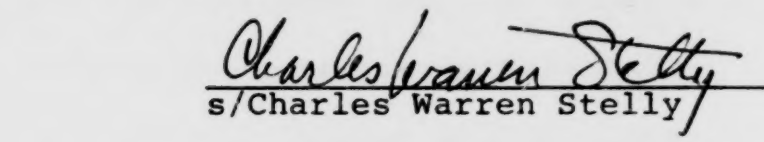
2) Boyd v. U.S., 116 U.S. 616, 635, held: "It is the duty of the courts to be watchful for the Constitutional rights of the citizen, and against any stealthy encroachments thereon."

CONCLUSION

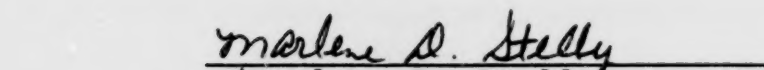
For all the foregoing reasons, Petitioners respectfully request this

Court to issue a Writ of Certiorari to the United States Court of Appeals For the Fifth Circuit.

Respectfully submitted,



s/Charles Warren Stelly



s/Marlene D. Stelly
Petitioners-Appellants Individual Persons, Mere Man & Woman
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August 15, 1985

APPENDIX A

CHARLES W. and MARLENE D. STELLY,

Petitioner-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

No. 84-4782

Summary Calendar.

United States Court of Appeals,

Fifth Circuit.

June 3, 1985.

Appeal from the Decision of the United States Tax Court.

Before CLARK, Chief Judge, GARWOOD, and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:

I.

The Stellys appeal the United States Tax Court's decision assessing a deficiency and penalty against the taxpayers. Based

on the frivolous nature of their contentions, we dismiss this appeal and tax double costs and reasonable attorney's fees against the Stellys.

II.

On their 1980 return, the Stellys reported almost $40,000 in wages and $1,847.55 in interest income. They failed, however, to report approximately $2,300 of their interest income. The IRS issued to the Stellys a notice of deficiency assessing $948 additional tax due on the interest income.

The Stellys petitioned the Tax Court for a redetermination of the deficiency, claiming that inflation eroded the real value of their income. They also filed three amended returns for 1980. Each amended return omitted any wage or salary income, because the Stellys alleged that the tax on wages was unconstitutional. The IRS assessed three $500 penalties

against the Stellys for filing frivolous returns. See 26 U.S.C. § 6702. The award of these penalties is not before this Court. See 26 U.S.C. § 6703(b) & (c), nor is the tax due, if any, on the income from wages.

The IRS moved for summary judgment in July, 1984. The court scheduled a hearing on this motion for September 5, 1984 in Washington, D.C. The Stellys responded and petitioned for a change of venue to Houston, Texas. The court held the hearing as scheduled, denied the Stellys' venue motion, and granted summary judgment for the IRS, sustaining the deficiency assessed against the taxpayers. The Stellys now appeal, appearing pro se, as they have throughout this case.

III.

The thrust of the Stellys' argument is that taxing their wage and salary income is unconstitutional. They contend that

the sixteenth amendment only authorizes taxes on "gain", not income. They assert that compensation for labor is not gain because it is an even exchange; the employee provides services equal in value to the wage earned. Only extra compensation, such as a bonus, would be taxable as a gain. They continue their argument by noting that if they persuade this court in the above argument, then a fact issue remains concerning the amount of a refund due them, precluding summary judgment.

[1] The frivolity of this argument is patently obvious, and the other contentions raised in the Stellys' briefs are equally meritless. It is clear beyond peradventure that the income tax on wages is constitutional. See e.g., Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 430, 75 S.Ct. 473, 476, 99 L.Ed. 483 (1955); Eisner v. Macomber; 252 U.S. 189, 207,40 S.Ct. 189, 193, 64 L.Ed. 521

(1919); Brushaber v. Union Pacific Railraod Co., 240 U.S. 1, 12,36 S.Ct. 236, 239, 60 L.Ed. 493 (1916); Perkins v. Commissioner, 746 F.2d 1187, 1188 (6th Cir. 1984); Granzow v. Commissioner, 739 F.2d 265, 267-68 (7th Cir. 1984); Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984); Funk v. Commissioner, 687 F.2d 264, 265 (8th Cir. 1982); Lonsdale v. Commissioner, 661 F.2d 71, 72 (5th Cir. 1981); United States v. Romero 640 F.2d 1014, 1016 (9th Cir. 1981); Broughton v. United States, 632 F.2d 706, 707 (8th Cir. 1980), cert. denied, 450 U.S. 930, 101 S.Ct. 1390, 67 L.Ed.2d 363 (1981); United States v. Francisco, 614 F.2d 617, 619 (8th Cir. 1980), cert. denied, 446 U.S. 922, 100 S.Ct. 1861, 64 L.Ed.2d 278 (1980); United States v. Russell, 585 F.2d 368, 370 (8th Cir. 1978); United States v. Porth, 426 F.2d 519, 523 (10th Cr. 1970), cert. denied, 400 U.S. 824, 91 S.Ct. 47,

27 L.Ed.2d 53 (1970); Acker v. Commissioner, 258 F.2d 568, 574-76 (6th Cir. 1958), aff'd, 361 U.S. 87, 80 S.Ct. 144, 4 L.Ed.2d 127 (1959).

Every court that has addressed the issue of the constitutionality of the income tax on wages, 28 U.S.C. §61(a), has held the statute valid. The Stellys' contention to the contrary is frivolous.

IV

[2-6] Sanctions are appropriate when a frivolous appeal is brought, pursuant to Fed.R.App.P. 38, and for appeals from the tax court, under 26 U.S.C. § 7482(c)(4). See H.R.Rep. No. 1, 69th Cong., 1st Sess. at 19 (1939-1 Cum.Bull. (pt.2) 315, 328). Cf. Fed.R.Civ.P. 11. These sanctions may include single or double costs as well as reasonable attorney's fees. Wright v. Commissioner, 752 F.2d 1059, 1062 (1985); Knoblauch v. Commissioner, 749 F.2d 200,202 (5th Cir. 1984) (Knoblauch I);

Hagerty v. Succession of Clement, 749 F.2d 217 (5th Cir. 1984) (and cases cited therein). Even greater sanctions may be imposed under appropriate circumstances. Granzow, supra, at 270. Frivolous appeals unjustly burden the resources of the court and the government. The devotion of limited resources and time to these meritless cases causes deserving litigants to wait. In addition, the opposite party is delayed in receiving the just benefits of the trial court's judgment until the appeal is concluded. Justice delayed is justice denied. Sanctions are imposed to deter such suits.

All citizens have the right to litigate with their government and the right to appeal any adverse decision of a trial court. We do not lightly impose sanctions for invoking the right of appeal. Many such reviews that are eventually determined to be without merit are commenced in

good faith with a reasonable belief that they are currently supported by existing law, or justify an extension, modification or reversal of the current law. Crain, Supra, at 1418. In contrast, we only impose sanctions when a meritless appeal is frivolous-when the claim advanced is unreasonable, or it's not brought with a reasonable good faith belief that it is justified. Cf. Hagerty, supra, at 222 ("An appeal is frivolous when it involves legal points not arguable on their merits.") Such is the case in the present appeal in light of the overwelming and longstanding precedent refuting appellants' arguments.

Only one matter prompts any hesitation in imposing sanctions. That is that the Stellys appear pro se. Although a court can demand a higher degree of responsibility from members of the bar, litigants cannot be treated as free to advance

frivolous claims merely because they appear without counsel. Where pro se litigants are warned that their claims are frivolous, as were the Stellys, and where they are aware of the ample legal authority holding squarely against them, then sanctions are appropriate. See Wright, supra, at 1062-63; Perkins, supra, at 1188-89; Lonsdale, supra at 72.

The Stellys demonstrated facility in legal research by citing numerous precedent, spanning the period from the words of Chief Justice John Marshall in 1829 to those of this court as late as February of this year. We have no doubt, then, that the Stellys were thoroughly familiar with the precedent which uniformly denied validity to their position. In addition, the IRS and tax court informed them of the frivolous nature of their claims.

[7] In the interest of justice we dismiss this appeal, see Fed.R.Ap.P., Loc.R.42.2, and impose double costs and attorney's fees on the Stellys for bringing a frivolous appeal. Fed.R.Ap.P. 38. Rather than calculate the amount of those attorney's fees, however, we remand to the tax court to make this determination. Knoblauch v. Commissioner of Internal Revenue, 752 F.2d 125 (5th Cir. 1985) (Knoblauch 11), does not prohibit this remand. In Knoblauch 11, this court departed from our "preferred procedure ... to remand for the determination of the amount of such an award," id. at 128 n. 4, stating that the appeal was from the tax court instead of the district court. Knoblauch 11, however, did not establish a different procedure for determining attorney's fees in all tax court cases from that applicable in district court cases. The

panel merely exercised its discretion to determine the amount of those fees itself rather than remand the issue. The panel in Knoblauch 1, supra at 203, had directed the Commissioner to file the supporting documents to his motion for attorney's fees with the appellate court. The Commissioner submitted those documents to that court, and Knoblauch did not contest the Commissioner's calculations. Thus, the panel deemed it more expedient to compute the fee, pursuant to our Local Rule 47.8.1, rather than to remand.

In contrast, we have not yet received affidavits and calculations from the Commissioner to support an attorney's fee award. Due to the tax court's superior fact finding capability, we remand to that court to calculate the amount of the Commissioner's reasonable attorney's fees. The Stellys' petition for "reasonable

litigation costs" is frivolous and is hereby denied.

DISMISSED and REMANDED for a HEARING to DETERMINE ATTORNEY'S FEES.

APPENDIX B

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

CHARLES W. AND
MARLENE D. STELLY,
Petitioner,

v. Docket No. 26335-83

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

ORDER AND DECISION

This case was called from the calendar of the Court's motions session at Washington, D.C. on September 5, 1984, for hearing on (1) respondent's motion for summary judgment, filed August 6, 1984, (2) petitioners; motion for leave to amend petition, filed August 20, 1984, and (3) petitioners' motion to change venue of summary judgment, filed August 27, 1984. Respondent appeared by his counsel. There was no appearance by or on behalf of

petitioners; however, the Court did have before it petitioners' written statement in lieu of personal appearance.

After due consideration and for reason appearing in the transcript of the proceedings on September 5, 1984, it is

ORDERED that petitioners' motion to change venue of summary judgment is denied;

ORDERED that petitioners' motion for leave to amend petition is denied;

ORDERED that respondent's motion for summary judgment is granted; and it is further

ORDERED and DECIDED that there is a deficiency in income tax due and owing from petitioners for the taxable year 1980 in the amount of $942.89.

(Signed) Randolph F. Caldwell, Jr.
Special Trial Judge

Entered: September 13, 1984

APPENDIX C

EXCERPTS FROM TRANSCRIPT OF THE PROCEEDINGS

UNITED STATES TAX COURT

In the Matter of:

CHARLES W. AND MARLENE D. STELLY,	)	
Petitioners,	)	
vs.	)	Docket Number 26335-83
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

South Courtroom
400 Second Street, N.W.
Washington, D.C.

Wednesday,
September 5, 1984

The above-entitled matter came on for hearing, pursuant to notice, at 11:11 a.m.

BEFORE: HON. RANDOLPH F. CALDWELL
Special Trial Judge

APPEARANCES:

On behalf of the Respondent:

PHILLIP J. STARR, ESQUIRE
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

...

THE COURT: You evidently haven't had copies of two other Motions that he's filed, Mr. Starr. And I guess I better -- they have been served direct on counsel down in Texas, but I don't suppose you have seen them.

MR. STARR: No, I have not, Your Honor.

THE COURT: Well, there's a Motion to change the venue of this hearing, and Motion for leave to amend the petition. And with the Motion to Leave, there is an amended petition which has been lodged.

They raise the question in seeking to amend, he says that one of the items of interest income was already reported on the return. The Government conceded, I think, of a little $11.00 item; said they would concede that wasn't here. And he concedes the other two items -- there's four items, I believe, in the adjustment.

He concedes receiving the other two. Let me get those; just a minute here.

If you turn to page two of your Motion.

MR. STARR: That's correct, Your Honor.

THE COURT: As I understand, Ms. Wilcox conceded that the $11.00 --

MR. STARR: That's correct, Your Honor.

...

He says that the $219.00 was on the return filed. Now, there's nothing to his position that impacted inflation, that wipes out the taxability of the interest. And on that ground your Motion should be granted.

He raises the question whether he should be allowed to amend his petition to raise two other grounds. And as I read those grounds are, that the interest income is not income, it's something that he calls revenue. And his wages are not income. Well, there's nothing to either one of those two grounds.

And so, my feeling is that the Motion to amend should be denied, because there would be no point in raising a frivolous position such as that.

The $219.00 item, I've looked over his return and I do not see that the $219 is on there. And I think he must be just mistaken. If you look at the amounts, the $219 is not listed. And if you look at the account numbers, the 7136179 is not among those reported on the return.

So, I'm going to hold -- your Motion for Summary Judgment will be granted; and I'm going to deny his Motion for Leave to Amend his petition and deny the Motion for change of venue.

MR. STARR: Thank you, Your Honor.

(Whereupon, at 11:15 a.m., the hearing was closed.)

APPENDIX D

October 12, 1982

Department of the Treasury

Internal Revenue Service

Austin, Texas 73301

Gentlemen:

This letter is written to inform you that I do NOT agree with the changes you have made in my 1980 tax return. I am presently working on amending that return in which I expect to correct the overpayment I have made (and even collect some interest due me).

As a matter of record, only two of the four interest accounts you claim were omitted were actually omitted from my return. One does not belong to me and another is already included on the return.

Please inform me as to how you may want my amended return routed.

Sincerely,

Charles Warren Stelly
2014 Hickory Creek
Kingwood, Texas 77339
(713) 358-6112

APPENDIX E

March 23, 1984

Mr. Roscoe L. Egger, Jr.
Commissioner of Internal Revenue
111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: United States Tax Court Docket No. 26335-83

Charles W. & Marlene D. Stelly,
Petitioners,
V.
Commissioner of Internal Revenue,
Respondent

Dear Mr. Egger:

This letter is a solicitation for written consent to permit me to amend my petition of the above reference case. I know that I may possibly receive such leave of the court, but I want to first ask you for consent. I have talked to your attorney (Sheri Wilcox) about this request, but I could not understand her

reasoning as to why she would not give her consent. Since written correspondence on this issue is necessary anyway, maybe after you have read my reasons for wanting to amend my petition you can convince her otherwise.

As you are aware, this petition is with regard to a) my 1980 income tax return, and b) your disallowance of my amended return dated Nov. 1, 1982 by your notice of April 29, 1983. My main reason for wanting to amend the petition dated Sept. 11, 1983 is that I want it to include the issues within the two subsequent amended returns that I have submitted (i.e., my second amended return dated Jan. 17, 1984 and the third-and final-amended return dated Feb. 22, 1984) for each of which I have not yet received a notice of acceptance or disallowance. Should you accept either of the last two amended returns, then the petition would, of course, not be

necessary due to the acceptance. However, your disallowance of both amended returns would mean that I would then receive legal notices stating I could bring suit for recovery of monies related to both disallowance notices. Your consent to let me amend the petition would therefore permit all the issues to be included in the above reference U.S. Tax Court case (for which the trial date has not yet been scheduled) thus increasing the possibility that it would become unnecessary for me to file suit for any of the three disallowed amended returns (provided, of course, the last two are disallowed).

My second reason for wanting to amend the petition is that two of the four interest accounts you listed in the Notice of Deficiency dated Aug. 3, 1983 as not being reported are in fact in error (i.e., not applicable) and I have not yet made this stipulation. The point in question

should be that the petition include all issues related to my 1980 tax return, and not that the petition be limited to the original petition that mentions only a few of the issues thus making it easier for the Respondent's attorney to defend.

I will be awaiting your reply and hopefully I will be able to submit an amended petition with your consent.

Sincerely,

Charles Warren Stelly
2014 Hickory Creek
Kingwood, Texas 77339

cc: Sheri Wilcox, Attorney
IRS-Houston, Tx.
Judge Howard Dawson, Jr.
Washington, D.C.

APPENDIX F

EXCERPTS FROM BRIEFS FOR APPELLANTS IN THE U.S. CT. OF APPEALS FOR THE 5TH CIRCUIT, NO. 84-4782

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule 28.2.4 of this Court, Appellants hereby inform the Court that they believe that the best way to maximize their chances for fair and impartial consideration in this case is for ORAL ARGUMENT to be heard. This is especially important because of the questionable (but qualified) decision of Lonsdale v. Commissioner, 661 F.2d 71 (5th Cir. 1981). The briefs we have submitted are quite straightforward and possibly better than the above case, but we would want to be available for informal discussion and/or questioning if desired by the Court. We also would want to know, should an unfavorable outcome result, if the Court really did not understand the basic logic

we would be presenting. The best way this can be determined is for one to be present. Reference is, of course, being made here to the discussion of "why and how bias decisions on tax cases have evolved" within my letter to Appellee's attorney that was part of our MOTION TO STRIKE... Appellants especially welcome the opportunity to point out the legal errors in the decisions of the relevant appellate court cases cited with and without quotes by Appellee (Br. 5,6) i.e., those that pertain to THE MAIN ISSUE, wages and/or salaries are NOT TAXABLE as INCOME under the 16th Amendment.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

CHARLES W. AND MARLENE D. STELLY,	§	
Petitioners-Appellants,	§	
v.	§	No. 84-4782
COMMISSIONER OF INTERNAL REVENUE,	§	
Respondent-Appellee.	§	

...

REBUTTAL ARGUMENT

I. REBUKE (NOT JUST DENY) APPELLEE's CLAIM THAT APPELLANTS HAVE PRESENTED A FRIVOLOUS APPEAL.

In order to clear the air of the smoke and stench of Appellee's brief, which needed two time extensions to materialize, Appellants offer the following strong gust of fresh air. In plain view, we now see the REAL carbon copy of this appeal. It is Evans v. Gore, 253 U.S. 245, 260,261, 262,263. This is a U.S. Supreme Court

Decision which covers the very main issue Appellants have presented in ARGUMENT (i.e., one's wages or salary is nontaxable as INCOME under the 16th Amendment).

...

QUESTIONS PRESENTED ON APPEAL

1) What is the legislative INTENT of the 16th Amendment?

2) Are one's own wages TAXABLE INCOME?

ARGUMENT

Before answering the all important questions above, appellants will first show that the U.S.T.C. erred in other ways when it granted RESPONDENT's MOTION FOR SUMMARY JUDGMENT and when it denied petitioners/appellants' MOTION FOR LEAVE TO AMEND PETITION. Factual evidence was presented in petitioners/appellant's RESPONSE TO MOTION FOR SUMMARY JUDGMENT and its AMENDED PETITION to substantiate the following:

1. The issues claimed by counsel for the Respondent as the only issues pertaining to settling the petitioners/ appellants tax return for the year ending 1980 were definitely not the only issues.
2. Counsel for the respondent may have submitted a bad faith Affidavit when she stated that petitioners/ appellants' income tax return she attached..." are the true and complete copies...".

The err is clear according to the case of Continental Oil Company v. Pauley Petroleum, Inc., Delaware Supreme Court, 251 A.2d 824,826 (1969), in which the court stated,

> "...the function of the judge in passing on a motion for summary judgment is not to weigh evidence and to accept that which seems to him to have the greater weight. His function is rather to determine whether or not there is any evidence supporting a favorable conclusion to the nonmoving party. When that is

> the state of the record, it is improper to grant summary judgment."

In this case not only was there evidence as stated above supporting a favorable conclusion to the nonmoving party, but even the greater weight favors the appellants position that an overpayment of $7,586 (plus interest) is due him (if I can prove that my own wages are not taxable income) since the final amended return, consent letter, MOTION FOR LEAVE TO AMEND PETITION, and AMENDED PETITION were all submitted in a proper and timely manner. (Since appellants' third or final amended return is their official return for the tax year ending 1980 which replaces or supersedes all other previous returns, it becomes the major issue in the AMENDED PETITION and must therefore be substantiated here within the ARGUMENT. Note, too, that appellants' official amended return includes the two honestly overlooked interest accounts as mentioned

in item 4. of their AMENDED PETITION. As appellants' stated all along, the $219.34 from account #40-7136179 was included in Schedule B of the original return dated April 11, 1981 along with the amount of $601.20 from account #40-713089-1, both from United Savings of Texas and together the subtotal amount is $820.54 as submitted at that time. See SCHEDULE "C" for a copy of the form 1099 replacement for the interest credited this account).